

2/19/2020

Clerk, U.S. District Court
District of Montana
Helena Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

HELENA DIVISION

DANIEL B. BURNETT and
RHONDA BURNETT,

Plaintiffs,

vs.

PACIFICSOURCE HEALTH PLANS,
ADVANCED MEDICAL REVIEWS,
LLC, and JOHN DOE,

Defendants.

No. CV 19-45-H-SEH

ORDER

Pending before the Court is Defendant PacificSource Health Plans' Motion to Dismiss Common Law Tort Claim of Bad Faith¹ under Fed. R. Civ. P. 12(b)(6), by which Defendant contends Montana's Unfair Trade Practices Act, specifically Mont. Code Ann. § 33-18-242(3), precludes Plaintiffs' claim for violation of the implied covenant of good faith and fair dealing.² Plaintiffs respond that Montana law provides for breach of the implied covenant as a contract action.³ Plaintiffs are correct.

¹ Doc. 47.

² See Doc. 48 at 7.

³ Doc. 49 at 5.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁴ A facially plausible complaint “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁵ In considering the motion, a court “must accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party.”⁶ However, a court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.⁷

Under Montana law, “every contract, regardless of type, contains an implied covenant of good faith and fair dealing. A breach of the covenant is a breach of the contract.”⁸ In most cases, a breach of the implied covenant is “only a breach of the contract and only contract damages are due.”⁹ “However, a claim may be brought for tortious breach of the implied covenant where a ‘special relationship’

⁴ *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

⁵ *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

⁶ *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (citing *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004)).

⁷ See *Sprewell v. Golden St. Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (citing *Mullis v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987)).

⁸ *Story v. City of Bozeman*, 791 P.2d 767, 775–76 (Mont. 1990).

⁹ *Story*, 791 P.2d at 775.

exists between the parties.¹⁰

Here, Plaintiffs assert “[t]he Amended Complaint alleges a special relationship contract and a breach of the covenant of good faith and fair dealing contained in that contract.”¹¹ Taking the allegations in the Amended Complaint¹² as true, Plaintiffs have sufficiently pled a breach of the implied covenant of good faith and fair dealing to survive a Rule 12(b)(6) motion.

ORDERED:

Defendant PacificSource Health Plans’ Motion to Dismiss Common Law Tort Claim of Bad Faith¹³ is DENIED.

DATED this 19th day of February, 2020.



SAM E. HADDON
United States District Judge

¹⁰ *Puryer v. HSBC Bank USA*, 419 P.3d 105, ¶ 23 (Mont. 2018) (citing *Story*, 791 P.2d at 776).

¹¹ Doc. 49 at 3.

¹² Doc. 45.

¹³ Doc. 47.